

Remarks

The Office Action mailed July 11, 2007 and made final has been carefully reviewed and the foregoing amendments have been made in consequence thereof.

Claims 2-6, 8-13, 39-45 47-57, and 59-64 are pending in this application. Claims 2-6, 8-13, 39-45 47-57, and 59-64 stand rejected. Claims 1, 7, 14-38, 46 and 58 have been canceled.

Initially, the Examiner has labeled each step of Claim 39 as (a)-(j). For convenience, Applicants follow this convention herein.

The rejection of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 under 35 U.S.C. § 112, second paragraph, is respectfully traversed. Applicants respectfully submit that Claims 2-6, 8-13, 39-45, 47-57, and 59-64 satisfy Section 112, second paragraph. More specifically, Applicants respectfully submit that Claims 2-6, 8-13, 39-45, 47-57, and 59-64 are definite and particularly point out and distinctly claim the subject matter of the invention.

The Office Action asserts that in Claim 39, step (c), the phrase “prompting the first user to link a metric target with a data field displayed on the customized template, wherein, the mettle [sic] target is at least one of a level and a weight” is vague and indefinite because as shown in Fig. 9, “metric target” is “a data/number entered” and “cannot be considered as ‘at least one of a level and a weight’ which is considered as ‘title’ or subheading’ of the ‘Field oder’ [sic]”. (Emphasis in original.) Applicants respectfully traverse this rejection.

Rather, in contrast, Applicants respectfully submit that Applicants may be their own lexicographers and, as such, have defined “metric target” in the claims to include “at least one of a level and a weight,” as recited in independent Claims 39, 40, 52, and 64. More specifically, the MPEP, at Section 2111.02, states that “[a]n applicant is entitled to be his or her own lexicographer . . . Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim.” Accordingly, Applicants respectfully submit that it is improper for the Examiner to define “metric target” as data/number entered when Applicants have defined “metric target” as “at least one of a level and a weight” in the body of the claim.

Furthermore, Applicants respectfully submit that Figure 9 of Applicants' specification illustrates an example of at least one of a level and a weight having a number value assigned thereto. Moreover, the Applicants' specification, at paragraph [00152], recites that "[a] weight is a number text if and as desired by user. Illustratively, a level can be a rating system selected by user if desired to indicate higher or lower desirable features or ratings." Accordingly, Applicants respectfully submit that "metric target" is not vague and/or indefinite as defined in the claims and in view of the specification.

The Office Action asserts that Claim 3 "is vague and indefinite because it calls for a further limitation on step '(j) generating a plurality of reports further comprise' but the 2 steps deal with '(k) performing a mathematical computation' and (l) 'generating a trend analysis' are not related to the generating the report. In other word [*sic*], it's not clear how the generating the computation or trend analysis further limit the step of 'generating a report' . . . Also, it's not clear the relationship of between steps (k) and (l)." (Emphasis in original.) Applicants respectfully traverse this rejection. Applicants, however, submit that Claim 3 has been amended to address this rejection.

For at least the reasons set forth above, Applicants respectfully request that the rejections of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 under 35 U.S.C. § 112, second paragraph, be withdrawn.

The rejection of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 under 35 U.S.C. § 103(a) as being unpatentable over (1) Applicant Admitted Prior Art (or AAPA) in view of (2) Bernardo et al. (U.S. Patent No. 6,684,369) ("Bernardo") and (3) Fleming et al. (U.S. Patent Publication 2002/0059264) ("Fleming") is respectfully traversed. Because the Examiner rejected all of the independent claims, namely Claims 39, 40, 52, and 64, together, Applicants have structured the following arguments using the same format.

The Office Action asserts that "Claims 39, 40, 52, and 64 appear to have two scopes:

- (1) creating a customized template by a first user for use on a client system which are covered by steps (a)-(f), and

- (2) using the created template by the first user for managing the business metrics by a second user on a client system as shown by steps (g)-(j).”

The Office Action further asserts that:

[s]ince the scope of invention dealing with managing business metrics using the customized template created by the 1st user and for at the at least one client system by a 2nd user and as shown in [0003] of the specification, the managing business metrics normally require 4 steps: capturing the business metrics data, analyzing the captured data, reporting and assessing the data of the business metrics, only the captured data (or entering data) by the 2nd user as shown by steps (g)-(j) that are entered on the customized template will receive patentable weight since they meet the scope of the claim.

(Emphasis in original.) Applicants respectfully traverse such assertions. Rather, Applicants respectfully submit that the scope of the claim is defined by each and every limitation of the claim. More specifically, steps (a)-(f) as recited in Claims 39, 40, 52 and 64 relating to “creating a template” are essential features of Claims 39, 40, 52 and 64, respectively, as written.

The Examiner is respectfully directed to MPEP sections 2131 and 2143.03. MPEP section 2131 indicates that to anticipate a claim, a reference must teach each and every element of a claim. MPEP section 2143.03 indicates that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness of a claimed invention. Consequently, Examiners are not permitted to arbitrarily decide which features of a claim are considered for examination, and which features of a claim are not. The Examiner is required to consider each claim as a whole. Applicants respectfully request examination of Claims 2-6, 8-13, 39-45, 47-57, and 59-64, accordingly.

Furthermore, Applicants respectfully traverse the assertion in the Office Action that “for limitation of ‘c) prompting the 1st user to link a metric target...’, that has no patentable weight since there are no discussion in steps (g)-(j) where the 2nd user enters ‘target number or data’ on the ‘metric target’ with a data field displayed on the customized template under ‘subheading’ ‘level’ or ‘weight’.” Rather, Applicants respectfully submit that the recitation of “prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight” should be given full weight and

consideration by the Office. More specifically, Applicants define “metric target” as “at least one of a level and a weight” in Claims 39, 40, 52 and 64, and that such a definition is supported in the Applicants’ specification at, for example, paragraphs [00152] and [00153]. Accordingly, Applicants submit that they can use “at least one of a level and a weight,” rather than “target number or data” and/or “subheading,” as desired by the Examiner to define their invention because, as discussed above, the Applicants are their own lexicographers. The Examiner must consider each element of the claims.

Moreover, Applicants respectfully traverse the assertion in the Office Action that “this webpage is not active or being used in the managing of the business metrics of the 2nd user business, that this feature of step (c) has no patentable weight because it’s not being used.” In contrast, Applicants respectfully submit that Claims 39, 40, 52 and 64 are directed to managing business metrics, and that the claimed steps of managing business metrics include steps directed to creating a customized template. As such, the recitation of “prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight” does have patentable weight because such a recitation is directed to the creation of the customized template used to manage business metrics.

Additionally, Applicants respectfully traverse the assertion in the Office Action that

there is no discussion of (2) the hierarchy of entities in steps (g)-(j) of the 2nd user business managing steps. Therefore, only steps (g)-(j) using the customized template created in (b) appear to be essential to the scope of the claimed invention. Note that step (g) only calls for “displaying the customized template at the at least one client system” and no limitation indicated that the customized template has to be come *[sic]* from steps (b)-(f) and therefore, the customized template can come from step (b). (Emphasis added.)

Applicants respectfully submit that each of Claims 39, 40, 52 and 64 recites in step (b) “a customized template,” and in steps (c), (e), (f), (g), and (j), Claims 39, 40, and 52 each recite “*the* customized template” and Claim 64 recites “*the created* template.” (Emphasis added.) As such, the customized template created using the create template web page in step (b) is the same customized template used in the remainder of the claim, and, more specifically, in step (g).

Further, Claims 39, 40, 52 and 64 have each been amended to include the recitation “prompting the first user to link a metric target with a *first data field* displayed on the customized template, wherein the metric target is at least one of a level and a weight” in step (c) and the recitation “the second user enters the data about business metrics into the data fields displayed on the customized template including *the first data field* having the metric target assigned thereto” in step (g). (Emphasis added.) As such, Applicants respectfully submit that the first data field in step (c) is the same first data field used in step (g). Accordingly, Applicants respectfully request that Claims 2-6, 8-13, 39-45, 47-57, and 59-64 each be given full consideration.

In addition, Applicants respectfully submit that no combination of AAPA, Bernardo and Fleming describes or suggests the claimed invention. As discussed below, at least one of the differences between the cited references and the present invention is that none of AAPA, Bernardo, or Fleming, alone or in combination, describe or suggest a method (Claim 39), a network based system (Claim 40), an apparatus (Claim 52), or a computer program (Claim 64), for managing business metrics for a business entity using a server system coupled to a database and at least one client system, the business entity having a plurality of business units, the method comprising the steps of: storing in the database a plurality of web pages including a create template web page; prompting a first user to create a customized template for receiving business metrics by displaying at the at least one client system the create template web page, the create template web page prompts the first user to enter data including at least one of a template name, a frequency, a first due date, a contact name, and a template description, the create template web page prompts the first user to define data fields to be displayed on the customized template and a type of business metrics to be entered into the customized template, the customized template is stored within the database for retrieval by a second user for inputting business metrics; and, *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight.*

Moreover, Applicants submit that none of AAPA, Bernardo, or Fleming, alone or in combination, describe or suggest a method for managing business metrics for a business entity including creating at least one hierarchy of entities within the business entity including storing within the database a relationship between each of the business units included within the

business entity; linking the customized template to the at least one hierarchy of entities for restricting access to the customized template to only selected business units included within the business entity; linking the data fields included within the customized template to the at least one hierarchy of entities for combining data for a plurality of selected business units included within the business entity; displaying the customized template at the at least one client system to prompt the second user to enter business metrics relating a business unit linked to the customized template, the second user enters business metrics into the data fields displayed on the customized template including the first data field having the metric target assigned thereto; storing the business metrics in the database; analyzing the business metrics stored in the database using the server system; and, generating, using the server, a plurality of reports including a first report showing business metrics for each business unit linked to the customized template including each business unit having entered data and the hierarchical relationship between each business unit, and a second report containing desired combinations of business metrics entered into linked data fields for each business unit linked to the customized template based on the hierarchy of entities.

AAPA discloses that capturing, analyzing, reporting and assessing business metrics can be highly valued business management tools. Additionally, AAPA discloses, the availability of a readily customizable spreadsheet for each of several business units is a major advantage to that business unit because this may result in capture of needed valuable business metric data thereby enhancing analysis and reporting and business management capability.

Bernardo discloses a tool, system and method for creating Web sites. More specifically, Bernardo discloses a library of templates (e.g., text, fields, HTML code and formulas) that correspond to the available features and options. The templates comprise databases which may include fields, forms, views, text, formulas and profiles that enable customization of the features. There are fields for company name, address, contact person, etc. The user may be prompted to select whether to create a new site or edit an existing one. Features of each Web page include formatting options, security links, colors, borders, buttons, workflow commands, graphics, backgrounds, text, and other items. Some features may be required and some may be discretionary. The templates may be stored in a database 40 associated with server 30. A page may also contain various links to other files. For example, the link may include a uniform

resource locator that may link to another Web page. A page may include various fields in which text may be entered to customize the resulting Web page without writing HTML or other code. A library of Help documents are associated with the templates. The help documents include fields that link the document with one or more related fields of other templates to associate each help document with one or more features and/or fields.

Fleming discloses a method for presenting data derived from one or more databases. A business model maps the data that can be requested by a user to the data contained in databases 2914. The databases may be spread across multiple enterprises or corporations 2902, 2904, and 2908. Monitors are built using templates, so customers are able to rapidly customize their look and feel to suit their particular requirements. Additionally, since monitors 3102 are easily customized, business data can be properly presented, in real time, to all levels of client users, allowing them to take quick action when problems arise. The monitors are created around trend markers 3104, which provide a graphical display of a trend of business data over time. By managing these trend markers 3104, client users can quickly avert problems before they affect the financial performance of the company. By selecting trend symbol 3104, the end user 206 will be provided detailed information related to the selected trend symbol. This detailed information may also have trend symbols which allow a user to visually narrow the reasons for trend changes of the originally selected trend symbol. Trend markers 3104 may be based on a mathematical function which is associated with, but not limited to, a plurality of categories or indicators. In various embodiments the trend markers 3104 indicate whether information displayed has exceeded a threshold, or changed over a period of time. Upon a user query, the value of a derived indicator or category is calculated by a model manager using the associated formula. Within a library 3801, collections 3803 are made up of one or more reports 3805. Each report 3805 is associated with a set of administrator defined categories and indicators, which a user may select to form a page. A report 3805 may contain a plurality of pages 3807. When a report 3805 is selected by a user, the report's 3805 underlying pages 3807 are displayed.

None of AAPA, Bernardo, or Fleming, considered alone or in combination describe or suggest a method, network, apparatus, or computer program for managing business metrics as recited in Claims 39, 40, 52, and 64, respectively. Specifically, neither AAPA, Bernardo, or Fleming, considered alone or in combination, describe or suggest a method for managing

business metrics for a business entity that includes *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight*. Rather, AAPA discloses capturing, analyzing, reporting and assessing business metrics; Bernardo discloses inputting data to construct a web page; and, Fleming discloses a method for presenting business data using a computer system wherein there may exist a parameter which is derivable from the business data and not necessarily pre-existing in the business data. Accordingly, none of AAPA, Bernardo, or Fleming, considered alone or in combination, describe or suggest a method for managing business metrics for a business entity using a server system coupled to a database and at least one client system, the business entity having a plurality of business units, said method comprising the steps of: storing in the database a plurality of web pages including a create template web page; prompting a first user to create a customized template for receiving business metrics by displaying at the at least one client system the create template web page, the create template web page prompts the first user to enter data including at least one of a template name, a frequency, a first due date, a contact name, and a template description, the create template web page prompts the first user to define data fields to be displayed on the customized template and a type of business metrics to be entered into the customized template, the customized template is stored within the database for retrieval by a second user for inputting business metrics; and, *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight*.

Moreover, Applicants submit that none of AAPA, Bernardo, or Fleming, alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity including creating at least one hierarchy of entities within the business entity including storing within the database a relationship between each of the business units included within the business entity; linking the customized template to the at least one hierarchy of entities for restricting access to the customized template to only selected business units included within the business entity; linking the data fields included within the customized template to the at least one hierarchy of entities for combining data for a plurality of selected business units included within the business entity; displaying the customized template at the at least one client system to prompt the second user to enter business metrics relating a

business unit linked to the customized template, the second user enters business metrics into the data fields displayed on the customized template including the first data field having the metric target assigned thereto; storing the business metrics in the database; analyzing the business metrics stored in the database using the server system; and, generating, using the server, a plurality of reports including a first report showing business metrics for each business unit linked to the customized template including each business unit having entered data and the hierarchical relationship between each business unit, and a second report containing desired combinations of business metrics entered into linked data fields for each business unit linked to the customized template based on the hierarchy of entities. For at least the reasons set forth above, Claims 39, 40, 52, and 64 are submitted to be patentable over AAPA, Bernardo, and Fleming.

Furthermore, dependent Claims 8, 48, and 60 recite, and Claim 64 further recites, that *the level indicates higher or lower desirable features or ratings*. None of AAPA, Bernardo, or Fleming, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics as recited in Claims 8, 48, 60, and 64. Specifically, neither AAPA, Bernardo, or Fleming, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity wherein *the level indicates higher or lower desirable features or ratings*. Rather, AAPA discloses capturing, analyzing, reporting and assessing business metrics; Bernardo discloses inputting data to construct a web page; and, Fleming discloses a method for presenting business data using a computer system wherein there may exist a parameter which is derivable from the business data and not necessarily pre-existing in the business data. Accordingly, none of AAPA, Bernardo, or Fleming, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity wherein *the level indicates higher or lower desirable features or ratings*. For the reasons set forth above, at least Claims 8, 48, 60, and 64 are submitted to be patentable over AAPA, Bernardo, and Fleming.

When the recitations of Claims 2-6 and 8-13, 41-45 and 47-51, and 53-57 and 59-63 are considered in combination with the recitations of Claims 39, 40 and 52, respectively, Applicants submit that dependent Claims 2-6, 8-13, 41-45, 47-51, 53-57 and 59-63 likewise are patentable over AAPA, Bernardo, and Fleming.

For at least the reasons set forth above, it is respectfully requested that the rejection of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 under 35 U.S.C. § 103(a) as being unpatentable over the combination of AAPA, Bernardo, and Fleming be withdrawn.

In addition to the arguments set forth above, Applicants further submit that the Section 103 rejection of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify AAPA using the teachings of Bernardo and Fleming. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

None of AAPA, Bernardo or Fleming, considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection is based on a combination of teachings selected from multiple references in an attempt to arrive at the claimed invention. Because there is no teaching, suggestion, or motivation for the combination of AAPA, Bernardo, and Fleming, the Section 103 rejection appears to be based on a hindsight

reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 be withdrawn.

Moreover, MPEP section 2143.03 indicates that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness of a claimed invention. Examiner has arbitrarily decided to disregard features of the claims directed towards creating a template. According to MPEP section 2143.03, Examiners are not permitted to arbitrarily decide which features of a claim are considered for examination, and which features of a claim are not. The Examiner is required to consider each claim as a whole. Applicants respectfully request examination of Claims 2-6, 8-13, 39-45, 47-57, and 59-64, accordingly.

The rejection of Claims 2-13, 39-63, and 64 under 35 U.S.C. § 103(a) as being unpatentable over (1) or AIPA in view of (2) Fleming is respectfully traversed. Because the Examiner rejected all of the independent claims, namely Claims 39, 40, 52, and 64, together, Applicants have structured the following arguments using the same format. Claims 7, 46, and 58 have been canceled. Accordingly, Applicants respectfully request that the Section 103 rejection of Claims 7, 46, and 58 be withdrawn.

The Office Action asserts that "Claims 39, 40, 52, and 64 appear to have two scopes:

- (1) creating a customized template by a first user for use on a client system which are covered by steps (a)-(f), and
- (2) using the created template by the first user for managing the business metrics by a second user on a client system as shown by steps (g)-(j)."

The Office Action further asserts that "since the scope of the invention dealing with managing business metrics of the second scope, the limitations with respect to how the template is created as shown in the first scope appear to be irrelevant, thus receiving no patentable weight."

As discussed above, the features as recited in Claims 39, 40, 52 and 64 relating to "creating a template" are essential features of Claims 39, 40, 52 and 64, respectively, as written. The Examiner is respectfully directed to MPEP sections 2131 and 2143.03. MPEP section 2131 indicates that to anticipate a claim, a reference must teach each and every element of a claim. MPEP section 2143.03 indicates that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness of a claimed invention. Consequently, Examiners are not permitted to arbitrarily decide which features of a claim are considered for examination, and which features of a claim are not. The Examiner is required to consider each claim as a whole. Applicants respectfully request examination of Claims 2-6, 8-13, 39-45, 47-57, and 59-64, accordingly.

Furthermore, Applicants respectfully submit that no combination of AAPA and Fleming describes or suggests the claimed invention. As discussed below, at least one of the differences between the cited references and the present invention is that neither AAPA nor Fleming, alone or in combination, describe or suggest a method (Claim 39), a network based system (Claim 40), an apparatus (Claim 52), or a computer program (Claim 64), for managing business metrics for a business entity using a server system coupled to a database and at least one client system, the business entity having a plurality of business units, the method comprising the steps of: storing in the database a plurality of web pages including a create template web page; prompting a first user to create a customized template for receiving business metrics by displaying at the at least one client system the create template web page, the create template web page prompts the first user to enter data including at least one of a template name, a frequency, a first due date, a contact name, and a template description, the create template web page prompts the first user to define data fields to be displayed on the customized template and a type of business metrics to be entered into the customized template, the customized template is stored within the database for retrieval by a second user for inputting business metrics; and, *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight.*

Moreover, Applicants submit that neither AAPA nor Fleming, alone or in combination, describe or suggest a method for managing business metrics for a business entity including creating at least one hierarchy of entities within the business entity including storing within the

database a relationship between each of the business units included within the business entity; linking the customized template to the at least one hierarchy of entities for restricting access to the customized template to only selected business units included within the business entity; linking the data fields included within the customized template to the at least one hierarchy of entities for combining data for a plurality of selected business units included within the business entity; displaying the customized template at the at least one client system to prompt the second user to enter business metrics relating a business unit linked to the customized template, the second user enters business metrics into the data fields displayed on the customized template including the first data field having the metric target assigned thereto; storing the business metrics in the database; analyzing the business metrics stored in the database using the server system; and, generating, using the server, a plurality of reports including a first report showing business metrics for each business unit linked to the customized template including each business unit having entered data and the hierarchical relationship between each business unit, and a second report containing desired combinations of business metrics entered into linked data fields for each business unit linked to the customized template based on the hierarchy of entities.

AAPA and Fleming are described above.

Neither AAPA nor Fleming, considered alone or in combination describe or suggest a method, network, apparatus, or computer program for managing business metrics as recited in Claims 39, 40, 52, and 64, respectively. Specifically, neither AAPA nor Fleming, considered alone or in combination, describe or suggest a method for managing business metrics for a business entity that includes *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight*. Rather, AAPA discloses capturing, analyzing, reporting and assessing business metrics, and Fleming discloses a method for presenting business data using a computer system wherein there may exist a parameter which is derivable from the business data and not necessarily pre-existing in the business data. Accordingly, neither AAPA nor Fleming, considered alone or in combination, describe or suggest a method for managing business metrics for a business entity using a server system coupled to a database and at least one client system, the business entity having a plurality of business units, said method comprising the steps of: storing in the database a plurality of web pages including a create template web page; prompting a first user to create a

customized template for receiving business metrics by displaying at the at least one client system the create template web page, the create template web page prompts the first user to enter data including at least one of a template name, a frequency, a first due date, a contact name, and a template description, the create template web page prompts the first user to define data fields to be displayed on the customized template and a type of business metrics to be entered into the customized template, the customized template is stored within the database for retrieval by a second user for inputting business metrics; and, *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight.*

Moreover, Applicants submit that neither AAPA nor Fleming, alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity including creating at least one hierarchy of entities within the business entity including storing within the database a relationship between each of the business units included within the business entity; linking the customized template to the at least one hierarchy of entities for restricting access to the customized template to only selected business units included within the business entity; linking the data fields included within the customized template to the at least one hierarchy of entities for combining data for a plurality of selected business units included within the business entity; displaying the customized template at the at least one client system to prompt the second user to enter business metrics relating a business unit linked to the customized template, the second user enters business metrics into the data fields displayed on the customized template including the first data field having the metric target assigned thereto; storing the business metrics in the database; analyzing the business metrics stored in the database using the server system; and, generating, using the server, a plurality of reports including a first report showing business metrics for each business unit linked to the customized template including each business unit having entered data and the hierarchical relationship between each business unit, and a second report containing desired combinations of business metrics entered into linked data fields for each business unit linked to the customized template based on the hierarchy of entities. For at least the reasons set forth above, Claims 39, 40, 52, and 64 are submitted to be patentable over AAPA and Fleming.

Furthermore, dependent Claims 8, 48, and 60 recite, and Claim 64 further recites, that *the level indicates higher or lower desirable features or ratings*. Neither AAPA or Fleming, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics as recited in Claims 8, 48, 60, and 64. Specifically, neither AAPA nor Fleming, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity wherein *the level indicates higher or lower desirable features or ratings*. Rather, AAPA discloses capturing, analyzing, reporting and assessing business metrics, and Fleming discloses a method for presenting business data using a computer system wherein there may exist a parameter which is derivable from the business data and not necessarily pre-existing in the business data. Accordingly, neither AAPA nor Fleming, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity wherein *the level indicates higher or lower desirable features or ratings*. For the reasons set forth above, at least Claims 8, 48, 60, and 64 are submitted to be patentable over AAPA and Fleming.

When the recitations of Claims 2-6 and 8-13, 41-45 and 47-51, and 53-57 and 59-63 are considered in combination with the recitations of Claims 39, 40 and 52, respectively, Applicants submit that dependent Claims 2-6, 8-13, 41-45, 47-51, 53-57 and 59-63 likewise are patentable over AAPA and Fleming.

For at least the reasons set forth above, it is respectfully requested that the rejection of Claims 2-13, 39-63, and 64 under 35 U.S.C. § 103(a) as being unpatentable over the combination of AAPA and Fleming be withdrawn.

In addition to the arguments set forth above, Applicants further submit that the Section 103 rejection of Claims 2-6, 8-13, 39-45, 47-57 and 59-64 is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify AAPA using the teachings of Fleming. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. It is impermissible to use the claimed invention as an instruction manual or

"template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaack, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Neither AAPA not Fleming, considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection is based on a combination of teachings selected from multiple references in an attempt to arrive at the claimed invention. Because there is no teaching, suggestion, or motivation for the combination of AAPA and Flemming, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 2-6, 8-13, 39-45, 47-57 and 59-64 be withdrawn.

Moreover, MPEP section 2143.03 indicates that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness of a claimed invention. Examiner has arbitrarily decided to disregard features of the claims directed towards creating a template. According to MPEP section 2143.03, Examiners are not permitted to arbitrarily decide which features of a claim are considered for examination, and which features of a claim are not. The Examiner is required to consider each claim as a whole. Applicants respectfully request examination of Claims 2-6, 8-13, 39-45, 47-57 and 59-64, accordingly.

The rejection of Claims 2-6, 8-13, 39-45, 47-57, and 59-64 under 35 U.S.C. § 103(a) as being unpatentable over (1) Applicant Admitted Prior Art (or AAPA) in view of (2) Bernardo, (3) Fleming, and (4) Abate et al. (U.S. Pub. No. 2002/0099590) ("Abate") is respectfully traversed. Because the Examiner rejected all of the independent claims, namely Claims 39, 40, 52, and 64, together, Applicants have structured the following arguments using the same format.

The Office Action asserts that:

ABATE et al is merely to teach the limitation of step (c) above if the claims is amended to received patentable weight by monitoring "business metrics" under multiple "subheadings" "planned", "target", "complete indicator" or "Variance to schedule" or "level", for the benefits of providing a more common, concise format for improving business performance and efficiency such as having early warning system and predictive control system to provide reliable output to customers and provide business leaders a snapshot of overall business execution health of the business managing metrics. (Emphasis in original.)

However, as discussed above, the features as presently recited in Claims 39, 40, 52 and 64 are essential features of Claims 39, 40, 52 and 64, respectively, as written. The Examiner is respectfully directed to MPEP sections 2131 and 2143.03. MPEP section 2131 indicates that to anticipate a claim, a reference must teach each and every element of a claim. MPEP section 2143.03 indicates that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness of a claimed invention. Consequently, Examiners are not permitted to arbitrarily decide which features of a claim are considered for examination, and which features of a claim are not. The Examiner is required to consider each claim as a whole. Applicants respectfully request examination of Claims 2-6, 8-13, 39-45, 47-57, and 59-64, accordingly.

Applicants respectfully submit that no combination of AAPA, Bernardo, Fleming, or Abate describes or suggests the claimed invention. As discussed below, at least one of the differences between the cited references and the present invention is that none of AAPA, Bernardo, Fleming, or Abate, alone or in combination, describe or suggest a method (Claim 39), a network based system (Claim 40), an apparatus (Claim 52), or a computer program (Claim 64), for managing business metrics for a business entity using a server system coupled to a database

and at least one client system, the business entity having a plurality of business units, the method comprising the steps of: storing in the database a plurality of web pages including a create template web page; prompting a first user to create a customized template for receiving business metrics by displaying at the at least one client system the create template web page, the create template web page prompts the first user to enter data including at least one of a template name, a frequency, a first due date, a contact name, and a template description, the create template web page prompts the first user to define data fields to be displayed on the customized template and a type of business metrics to be entered into the customized template, the customized template is stored within the database for retrieval by a second user for inputting business metrics; and, *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight.*

Moreover, Applicants submit that none of AAPA, Bernardo, Fleming, or Abate, alone or in combination, describe or suggest a method for managing business metrics for a business entity including creating at least one hierarchy of entities within the business entity including storing within the database a relationship between each of the business units included within the business entity; linking the customized template to the at least one hierarchy of entities for restricting access to the customized template to only selected business units included within the business entity; linking the data fields included within the customized template to the at least one hierarchy of entities for combining data for a plurality of selected business units included within the business entity; displaying the customized template at the at least one client system to prompt the second user to enter business metrics relating a business unit linked to the customized template, the second user enters business metrics into the data fields displayed on the customized template including the first data field having the metric target assigned thereto; storing the business metrics in the database; analyzing the business metrics stored in the database using the server system; and, generating, using the server, a plurality of reports including a first report showing business metrics for each business unit linked to the customized template including each business unit having entered data and the hierarchical relationship between each business unit, and a second report containing desired combinations of business metrics entered into linked data fields for each business unit linked to the customized template based on the hierarchy of entities.

AAPA, Bernardo, and Fleming are described above. Abate describes a business management method for monitoring an order fulfillment process of a product. The method includes setting control points corresponding to process milestones for product units from product order to product delivery and points in between; comparing a cumulative product unit demand versus an actual number of cumulative product unit completions to determine whether execution flow is ahead or behind at each of the control points; determining a delivery variance for individual product units based on product unit delivery timing; and identifying potential capacity shortages at each control point according to line rate analyses based on product units per week. A summary of the metrics is displayed such that data from each of the steps is compiled into data matrices for each of the control points.

None of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination describe or suggest a method, network, apparatus, or computer program for managing business metrics as recited in Claims 39, 40, 52, and 64, respectively. Specifically, none of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination, describe or suggest a method for managing business metrics for a business entity that includes *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight*. Rather, AAPA discloses capturing, analyzing, reporting and assessing business metrics; Bernardo discloses inputting data to construct a web page; Fleming discloses a method for presenting business data using a computer system wherein there may exist a parameter which is derivable from the business data and not necessarily pre-existing in the business data; and Abate discloses a business management method for monitoring an order fulfillment process of a product that includes determining a delivery variance and potential capacity shortages. Accordingly, none of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination, describe or suggest a method for managing business metrics for a business entity using a server system coupled to a database and at least one client system, the business entity having a plurality of business units, said method comprising the steps of: storing in the database a plurality of web pages including a create template web page; prompting a first user to create a customized template for receiving business metrics by displaying at the at least one client system the create template web page, the create template web page prompts the first user to enter data including at least one of a template name, a frequency, a first due date, a

contact name, and a template description, the create template web page prompts the first user to define data fields to be displayed on the customized template and a type of business metrics to be entered into the customized template, the customized template is stored within the database for retrieval by a second user for inputting business metrics; and, *prompting the first user to link a metric target with a first data field displayed on the customized template, wherein the metric target is at least one of a level and a weight.*

Moreover, Applicants submit that none of AAPA, Bernardo, Fleming, or Abate, alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity including creating at least one hierarchy of entities within the business entity including storing within the database a relationship between each of the business units included within the business entity; linking the customized template to the at least one hierarchy of entities for restricting access to the customized template to only selected business units included within the business entity; linking the data fields included within the customized template to the at least one hierarchy of entities for combining data for a plurality of selected business units included within the business entity; displaying the customized template at the at least one client system to prompt the second user to enter business metrics relating a business unit linked to the customized template, the second user enters business metrics into the data fields displayed on the customized template including the first data field having the metric target assigned thereto; storing the business metrics in the database; analyzing the business metrics stored in the database using the server system; and, generating, using the server, a plurality of reports including a first report showing business metrics for each business unit linked to the customized template including each business unit having entered data and the hierarchical relationship between each business unit, and a second report containing desired combinations of business metrics entered into linked data fields for each business unit linked to the customized template based on the hierarchy of entities. For at least the reasons set forth above, Claims 39, 40, 52, and 64 are submitted to be patentable over of AAPA, Bernardo, Fleming, and Abate.

Furthermore, dependent Claims 8, 48, and 60 recite, and Claim 64 further recites, that *the level indicates higher or lower desirable features or ratings.* None of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics as recited in Claims 8, 48, 60,

and 64. Specifically, none of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity wherein *the level indicates higher or lower desirable features or ratings*. Rather, AAPA discloses capturing, analyzing, reporting and assessing business metrics; Bernardo discloses inputting data to construct a web page; Fleming discloses a method for presenting business data using a computer system wherein there may exist a parameter which is derivable from the business data and not necessarily pre-existing in the business data; and Abate discloses a business management method for monitoring an order fulfillment process of a product that includes determining a delivery variance and potential capacity shortages. Accordingly, none of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination, describe or suggest a method, network, apparatus, or computer program for managing business metrics for a business entity wherein *the level indicates higher or lower desirable features or ratings*. For the reasons set forth above, at least Claims 8, 48, 60, and 64 are submitted to be patentable over of AAPA, Bernardo, Fleming, and Abate.

When the recitations of Claims 2-6 and 8-13, 41-45 and 47-51, and 53-57 and 59-63 are considered in combination with the recitations of Claims 39, 40 and 52, respectively, Applicants submit that dependent Claims 2-6, 8-13, 41-45, 47-51, 53-57 and 59-63 likewise are patentable over of AAPA, Bernardo, Fleming, and Abate.

For at least the reasons set forth above, it is respectfully requested that the rejection of Claims 2-6, 8-13, 41-45, 47-51, 53-57 and 59-63 under 35 U.S.C. § 103(a) as being unpatentable over the combination of AAPA, Bernardo, Fleming, and Abate be withdrawn.

In addition to the arguments set forth above, Applicants further submit that the Section 103 rejection of Claims 2-6, 8-13, 39-45, 47-57 and 59-64 is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify AAPA, Bernardo, and/or Fleming using the teachings of Abate. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention

is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

None of AAPA, Bernardo, Fleming, or Abate, considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection is based on a combination of teachings selected from multiple references in an attempt to arrive at the claimed invention. Because there is no teaching, suggestion, or motivation for the combination of AAPA, Bernardo, Fleming, and Abate, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 2-6, 8-13, 39-45, 47-57 and 59-64 be withdrawn.

Moreover, MPEP section 2143.03 indicates that all claim limitations must be taught or suggested by the prior art to establish prima facie obviousness of a claimed invention. Examiner has arbitrarily decided to disregard features of the claims directed towards creating a template. According to MPEP section 2143.03, Examiners are not permitted to arbitrarily decide which features of a claim are considered for examination, and which features of a claim are not. The Examiner is required to consider each claim as a whole. Applicants respectfully request examination of Claims 2-6, 8-13, 39-45, 47-57 and 59-64, accordingly.

In view of the foregoing amendments and remarks, all the Claims now active in the application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Daniel M. Fitzgerald", is written over a horizontal line.

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